

Comments regarding Raised Bill 6687  
Monday, April 1, 2013

Member of the Judiciary Committee:

My name is Dr. Neal Lippman. I am a physician specializing in Cardiac Electrophysiology, a subspecialty of Cardiology specializing in the treatment of patients with cardiac arrhythmias. My practice is based in Hartford, and I treat patients at St. Francis Hospital and Medical Center, The Hospital of Central Connecticut, Middlesex Hospital, and Eastern Connecticut Health Network. Like many of my physician colleagues, my previously scheduled surgical schedule today and the short notice prevents me from attending in person, and therefore I am submitting my comments in written form. I would like to offer my concerns regarding Raised Bill 6687, scheduled for a hearing before the Judicial Committee this Monday.

As you are aware, in 2005, Public Act 05-275, "An Act Concerning Medical Malpractice," attempted to address concerns regarding the availability and affordability of medical liability insurance for physicians. The resulting statute strengthened what is known as the "good faith certificate" by requiring that:

- The attorney filing suit, attach a written opinion of an expert in the field.

- The expert to be a "similar healthcare provider" to the defendant.

- The expert provide a detailed basis for the formation of the opinion that there appeared to be evidence of medical negligence.

- The case to be dismissed if a plaintiff failed to obtain the required opinion prior to filing the suit.

PA 05-275 permits plaintiff attorneys to redact the identity of the expert to address concerns regarding the ability to find willing experts. This coupled with the appropriate requirements for filing a good faith certificate has been effective in reducing the filing of frivolous law suits.

Raised bill 6687:

- Eliminates the need for a detailed basis for the formation of an opinion and replaces it with a lower threshold requiring that only one or more specific breaches of the standard of care be stated.

- Allows any expert who may testify at trial to satisfy the certificate of merit requirement. However, at trial, a 'non-similar healthcare provider' is subject to an evidentiary hearing to determine if the expert is appropriately qualified to testify. There is no such scrutiny of the qualifications of the alleged 'expert' who signs the certificate of merit. The pre-suit determination that the expert is 'qualified' is made solely by the plaintiff's attorney and cannot be challenged until trial, 2-3 years later. This undermines the whole purpose of thwarting meritless cases before they get into the system.

- Eliminates the automatic dismissal of cases filed without the necessary certificate of merit AND automatically gives plaintiffs a minimum of 60 additional

days to file the newly watered down certificate. THIS automatic 60+days is in addition to the automatic 90 day extension already in place to give plaintiffs additional time to procure an expert opinion.

As such, raised measure 6687 eliminates rational and important thresholds that must be met prior to moving forward with a medical liability complaint.

It is my sincere belief that the passage of 6687 can only lead to increased use of "defensive medicine," decreased willingness of physicians to care for patients with complex medical problems due to fear of litigation, an increase in meritless malpractice law suits, and the potential for an increase in malpractice premiums and the loss of qualified physicians to practice in other states.

In concert with my colleges, I believe that if the General Assembly is to address on section of the state's malpractice tort laws, it should instead examine the entire system and consider reformatory proposals, such as health courts, or other options that might create a system for malpractice compensation that is fair and accessible to both patients and their physicians.

The Trial Lawyers Association has raised the concern that, in the absence of raised measure 6687, plaintiffs will not have access to an adequate number of qualified certifying physicians. While they present no evidence that this has been the case so far, I would also personally volunteer to act as a certifying physician on behalf of the medical specialties in my area of expertise, to encourage my colleagues to do the same, and to work with our state medical organizations (including the Connecticut College of Cardiology, of which I am the Immediate Past-President) and the Connecticut State Medical Society, to develop an appropriate pool of qualifying physicians.

Again, while I am unable, due to patient care responsibilities, to be present for the hearing on Monday, I hope you will review my comments and give them consideration. Should the members of the Committee wish to meet at any time for further discussion, please feel free to contact me and I would look forward to that opportunity.

Respectfully submitted,

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